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SENATE BILL 72

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Cisco McSorley

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO ELECTIONS; REQUIRING A POST-ELECTION EVALUATION OF  
THE ACCURACY OF VOTING SYSTEMS; PROVIDING PROCEDURES; REPEALING  
AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Election Code is enacted  
to read:

"[NEW MATERIAL] POST-ELECTION DUTIES--VOTING SYSTEM  
CHECK.--

A. Following each general election for which an  
automatic recount is not required for a selected office  
pursuant to Section 1-14-24 NMSA 1978, the secretary of state  
shall contract with an election auditor approved by the state  
auditor to oversee a check on the accuracy of precinct  
electronic vote tabulators, alternate voting location

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1 electronic vote tabulators and absent voter precinct electronic  
2 vote tabulators. The election auditor shall publicly select a  
3 random sample of precincts from a pool of all precincts in the  
4 state as soon as practicable after the completion of the county  
5 canvasses. The size of the random sample shall be determined  
6 so that it will ensure, with at least a ninety percent  
7 probability for the selected offices, that faulty tabulators  
8 would be detected if they would change the outcome of the  
9 election for a selected office. The election auditor may  
10 choose to test additional precincts and electronic vote  
11 tabulators if initial results indicate more auditing is  
12 necessary.

13 B. For the purposes of this section, "selected  
14 offices" means the offices of governor or president, the  
15 statewide elective office for which the winning candidate won  
16 by the narrowest margin of all candidates for statewide  
17 elective office other than the office of the governor and all  
18 federal elective offices in New Mexico.

19 C. The election auditor shall notify the  
20 appropriate county clerks of the precincts that are to be  
21 included in the voting system check upon their selection. The  
22 election auditor shall direct the appropriate county clerks to  
23 compare the original precinct vote totals for candidates for  
24 selected offices from the randomly selected precincts with the  
25 respective vote totals of a hand recount of the paper ballots

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1 from those precincts in accordance with state auditor rules.  
2 The county clerks shall report their results to the election  
3 auditor within ten days of the notice to conduct the voting  
4 system check.

5 D. Based on the results of the voting system check  
6 and any other auditing results, the election auditor shall  
7 determine whether or not there is a statistically significant  
8 possibility that a full hand recount of the ballots for any of  
9 the selected offices would change the outcome of the election  
10 and shall report the determination to the state auditor and  
11 secretary of state and release the report publicly. The  
12 secretary of state or state auditor may call for a full hand  
13 recount of ballots based upon the election auditor's  
14 determination.

15 E. Persons designated as county canvass observers  
16 shall be notified by the appropriate county clerks of, and may  
17 observe, the hand recount described in Subsection C of this  
18 section. Observers shall comply with the procedures governing  
19 county canvass observers as provided in Section 1-2-31 NMSA  
20 1978.

21 F. All costs of a voting system check shall be paid  
22 by the state."

23 Section 2. A new section of the Audit Act is enacted to  
24 read:

25 "[NEW MATERIAL] GENERAL ELECTION AUDIT.--The state auditor  
.174400.3

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1 shall issue rules for the conduct and procedures of the post-  
2 election voting system check, set minimum qualifications for  
3 election auditors eligible for selection to conduct post-  
4 election evaluations of the accuracy of voting systems and  
5 approve the contract terms for election auditors."

6 Section 3. REPEAL.--Section 1-14-13.1 NMSA 1978 (being  
7 Laws 2005, Chapter 270, Section 75) is repealed.

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